

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1859 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

AMRAJI SUKHAJI THAKORE

Versus

SHRI SHRMA

Appearance:

1. Special Civil Application No. 1859 of 1997
MR PK JANI for Petitioner
RULE SERVED for Respondent No. 1
MR MK VAKHARIA for Respondent No. 2
Ms.Harsha Devani, A.G.P. for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: 06/09/1999

ORAL JUDGEMENT

1. This petition is on the final hearing Board
today. The list has been revised thrice. None appears
for the petitioner. Shri Vakharia for respondent No.2

and Ms.Harsha Devani, learned A.G.P. have been heard and the record has been examined.

2. Brief facts giving rise to this petition are as under :

The petitioner is resident of village Kukarwada and belongs to economically backward class community. There is gamtal land which is open land. The petitioner requested the village Panchayat to permit him to utilise portion of the land for running his business. Accordingly small piece of land was permitted by the panchayat to be used by the petitioner on payment of occupation charges. The petitioner in this way remained in possession of open piece of land since 1983. On 9.2.1984 the Gram Panchayat passed resolution No.42 by which the occupation of land by the petitioner was regularised. Large number of persons likewise occupying the land of village Kukarwada approached the District Collector, Mehsana who regularised their possession. Subsequently order of the District Collector was set aside by Secretary (Appeals). Against this order of Secretary (Appeals) similarly situated persons approached this Court by filing Special Civil Application No. 6026 of 1990 and other matters. While admitting the petition this Court directed the parties to maintain status-quo. Thereafter on 28.1.1994 City Survey Superintendent exercised his power u/s.61 of the Bombay Land Revenue Code. The petitioner therefore moved the District Collector for regularising his possession over the land. The District Collector, however, under his order dated 16.9.1995 rejected the said application. Feeling aggrieved against this order the petitioner moved revision application before the Secretary (Appeals). The said Application was also rejected on 15.2.1997, thereafter this petition was preferred.

3. It may be mentioned that the Special Civil Application No.6026 of 1990 mentioned in this writ petition was finally decided by this Court on 6.10.1998 wherein it was clearly observed that the land in occupation of persons like the petitioner was nothing but encroachment over portion of the public way. The history of litigation was considered in the special Civil Application as well and it was observed that no error apparent in the order passed by the State Government in exercise of its revisional jurisdiction was found. Consequently Special Civil Application No.6026 of 1990 was dismissed. Thereafter Letters Patent Appeal was also filed vide Letters Patent Appeal No.1329 of 1998 against the order of this Court in Special Civil Application

No.6026 of 1990 and the Letters Patent Appeal was also dismissed on 27.1.1999. It appears from the synopsis of this writ petition that the petitioner of Special Civil Application No.6026 of 1990 was identically situated as the petitioner of this writ petition. Consequently the impugned order of the State Government in exercise of revisional jurisdiction can not be said to be erroneous or suffering from any error of law. Consequently, this petition has no merit and is bound to fail.

4. The petition is accordingly dismissed with no order as to costs.

sd/-

Date : September 06, 1999 (D. C. Srivastava, J.)

sas